

Shainis & Peltzman, Chartered

Counselors at Law

Suite 290
1901 L Street, N.W.
Washington, D.C. 20036

(202) 293-0011
Fax (202) 293-0810

Aaron B. Shainis
Lee J. Peltzman

DOCKET FILE COPY ORIGINAL

Of Counsel
William H. DuRoss, III
Ruth S. Baker-Battist
Robert J. Keller

February 7, 2000

RECEIVED
FEB 07 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

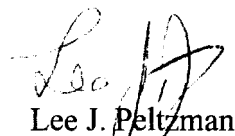
Ms. Magalie Salas
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Counter - TW-A325
445 - 12th Street, S.W.
Washington, DC 20554

Re: Comments on Counterproposal
MM Docket 99-215
RM-9337
Mason, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of BK Radio, is an original and four (4) copies of its Comments on Counterproposal in MM Docket No. 99-215. Please contact the undersigned in the event the Commission has any questions with respect to the filing of this Comments on Counterproposal.

Sincerely,


Lee J. Peltzman
Counsel for
BK RADIO

Enclosure

ORIGINAL

014

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
FEB 07 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Mason, Fredericksburg and)
Menard, Texas))

MM Docket No. 99-215
RM-9337

To: Chief, Allocations Branch

COMMENTS ON COUNTERPROPOSAL

BK RADIO ("BK"), by its attorneys, hereby submits its Comments with respect to the Counterproposal filed by Munbilla Broadcasting Corporation ("MBC") in the above-captioned proceeding. In support of its position, BK submits the following:

A Commission Notice of Proposed Rule Making, DA 99-1142, released June 11, 1999 ("NPRM"), proposed the allotment of Channels 239C2 and 273C2 at Mason, Texas, while permitting BK to amend its pending Mason application to Channel 239C2 without the loss of any cut-off protection. As proposed by the Commission, the allotment of these channels would eliminate the mutual-exclusivity between BK and the remaining two Mason applications for Channel 249C2. BK filed Comments supporting the addition of Channels 239C2 and 273C2 at Mason, Texas.

MBC filed a Counterproposal supporting the allotment of Channel 239C2 to the community of Menard, Texas, the allotment of Channel 249C2 to Fredericksburg, Texas and the substitution of Channel 273C2 for Channel 249C2 at Mason, Texas.

The MBC Fredericksburg Counterproposal is unacceptable. The technical study provided by MBC itself demonstrates that its proposal is short-spaced to the proposal of Station KVCQ(FM), Luling, Texas in MM Docket 98-198. See Attachment. While MBC may hope that someday the KVCQ(FM) proposal will be denied by the Commission and its Fredericksburg counterproposal thereby be found acceptable, it is binding Commission law that “counterproposals must be technically correct at the time of their filing.” Broken Arrow and Bixby, Oklahoma and Coffeerville, Kansas, 3 FCC Rcd 6507, 6511 n.2 (1988), recon denied, 4 FCC Rcd 6981 (1989). See also Latta, Marion, Camden and Blythewood, South Carolina, 10 FCC Rcd 7204 (1995); Hattiesburg, Mississippi, 7 FCC Rcd 7602 (1992); Fort Bragg, California, 6 FCC Rcd 5817 (1991).


With respect to MBC’s Counterproposal for Menard, Texas, BK has located an alternate channel of the same class for that community. Channel 265C2 would provide a similar first local service to Menard, Texas while permitting Channel 239C2 to be allotted to Mason as proposed initially by BK. The alternate channel for Menard meets the Commission’s technical rules and is therefore acceptable. See attached Technical Statement. The Menard channel is not proposed for an existing station, but rather will be available for new applications. No party, including MBC, has the right to a specific channel since it is far from certain that MBC will be the successful applicant.

In view of the above, there is no need to substitute Channel 273C2 for Channel 249C2 at Mason, Texas since the Fredericksburg, Texas Counterproposal is unacceptable. Channel 239C2

and Channel 273C2 may be allotted to Mason as initially proposed by BK and Channel 265C2
allotted to Menard as that community's first local service.

Respectfully submitted,

BK RADIO

By: 

Lee J. Peltzman
Its Attorney

Shainis & Peltzman, Chartered
1901 L Street, N.W., Suite 290
Washington, DC 20036
(202) 293-0011

February 7, 2000

07-30-1999

John Furr & Associates Inc.

PAGE 1

FM Study for: FRED
 Location: FREDERICKSBURG, TX
 Call City, State
 Status Proponent

FCC Database Date: 8/1999
 Channel Class: C2
 Chan Class Freq kW Latitude Dist.
 File Number HAAT Longitude Azm. Clear (km)

>>>>>> Study For Channel 249 97.7 MHz <<<<<<<

ALLOC	MASON, TX	249 C2 97.7	30-31-00	14.6	190	
VAC		Docket-89-84	0	99-07-00	305.6	-175.4 SHORT
		Use of 73.215 for short spacing requires:	177		-162.4	SHORT
FA VAC	MASON, TX	249 C2 97.7	30-31-00	14.6	190	
DEL	Gulfwest B/C Company	RM-	0	99-07-00	305.6	-175.4 SHORT
		Use of 73.215 for short spacing requires:	177		-162.4	SHORT
NEW	MASON, TX	249 C2 97.7 50.	30-31-40	16.4	190	
APP	Fritz, Jayson D. and	BPH-960826MS 150	99-07-51	306.3	-173.6	SHORT
		Use of 73.215 for short spacing requires:	177		-160.6	SHORT
NEW	MASON, TX	249 C2 97.7 50.	30-33-57	18.1	190	
APP	Foxcom, Inc.	BPH-960826MH 150	99-06-49	320.4	-171.9	SHORT
		Use of 73.215 for short spacing requires:	177		-158.9	SHORT
NEW	MASON, TX	249 C2 97.7 50.	30-33-58	18.1	190	
APP	BK Radio	BPH-960823MP 150	99-06-48	320.5	-171.9	SHORT
		Use of 73.215 for short spacing requires:	177		-158.9	SHORT
KVCO	LURING, TX	249 C2 97.7	29-31-59	164.4	190	
ADD	Gulfwest B/C Company	RM-	0	97-38-42	127.4	-25.6 SHORT
		Use of 73.215 for short spacing requires:	177		-12.6	SHORT
KWTXFM	WACO, TX	248 C 97.5 97.0	31-19-19	187.82	188	
LIC	Gulfstar Communicatio	BMLH-881209KA 478	97-18-58	58.2	-0.18	CLOSE
KAJA	SAN ANTONIO, TX	247 C 97.3 98.	29-31-25	104.89	105	
LIC	Clear Channel Holding	BMLH-981001KA 300	98-43-25	165.6	-0.11	CLOSE
KWTXFM	WACO, TX	248 C 97.5 100.	31-20-16	189.23	188	
CP	Capstar Royalty II Co	BMPH-981125IC 430	97-18-36	57.8	+1.23	CLOSE
KEEP	BANDERA, TX	252 A 98.3 1.65	29-51-22	65.4	55	
LIC	James G. Withers	BLH-910620KD 131	99-05-25	188.2	+10.4	CLOSE
KEEP	BANDERA, TX	252 A 98.3	29-51-22	65.4	55	
DEL	Reding Broadcasting	Docket-98-55	0	99-05-25	188.2	+10.4 CLOSE
KEEP	BANDERA, TX	252 A 98.3	29-51-22	65.4	55	
DEL	Reding Broadcasting	Docket-90-466	0	99-05-25	188.2	+10.4 CLOSE
KEEP	BANDERA, TX	252 A 98.3 1.65	29-51-21	65.5	55	73.215
CP	James G. Withers	BPH-990608IB 131	99-05-26	188.3	+10.5	CLOSE
KGKLFM	SAN ANGELO, TX	248 C1 97.5 100.	31-29-46	179.2	158	
LIC	KGKL, Inc.	BLH-851101KD 125	100-24-50	311.1	+21.2	CLEAR
ALLOC	SAN CARLOS, CI	248 C 97.5	29-01-45	241.8	215	
			0	100-54-00	230.2	+26.8 CLEAR

JF&A
 COMMUNICATIONS
 CONSULTANTS

FREDERICKSBURG ALLOCATION STUDY

MUNBIELLA BROADCASTING
 MASON, TX
 EXHIBIT F

Technical Statement

This statement and the attached exhibits were prepared on behalf of BK Radio. This statement shows both a problem and an alternative to a Counter Proposal submitted by Munbiella Broadcasting Corporation (Munbiella).

In Munbiella's counter proposal, channel 239C2 is proposed as new service for Menard and use of channel 249C2 for first service to Fredricksburg, Texas. Both proposed channels are mutually exclusive with their proposed use in Mason, Texas, MM Docket No. 99-215, RM-9337.

Menard, Texas

An alternate channel (265C2) is available for allocation to Menard, Texas that is not mutually exclusive with 239C2 for Mason. Exhibit #1 shows the area to locate approximately 13 miles south of Menard that complies with 73.315(a) and (b) by covering the entire city of Menard with a 70 dbu contour. Exhibit #2 shows compliance with 73.207 separation requirements.

Fredricksburg, Texas

The allocation of Channel 249C2 to Fredericksburg is not available. As shown in Munbiella own technical statement, the addition of channel 249C2 is short spaced to an existing proceeding for Luling, Texas. In Munbiella's Counter-Proposal Allocation Statement, Exhibit F, displays this short spacing of 25.6 km to KVCO's existing proposal.

In summary BK proposes:

City	Existing	Delete	Add
Mason	249C2	---	239C2, 273C2, 288C2
Menard	---	---	265C2
Fredricksburg	---	---	---

The foregoing statement was prepared on behalf of BK Radio by Bryan A. King, a partner in BK Radio, and all information contained herein is true and correct to the best of my belief. My qualifications are a matter of record before the Federal Communications Commission.



Bryan A. King
Partner, BK Radio

Date 2-7-2000

Page3

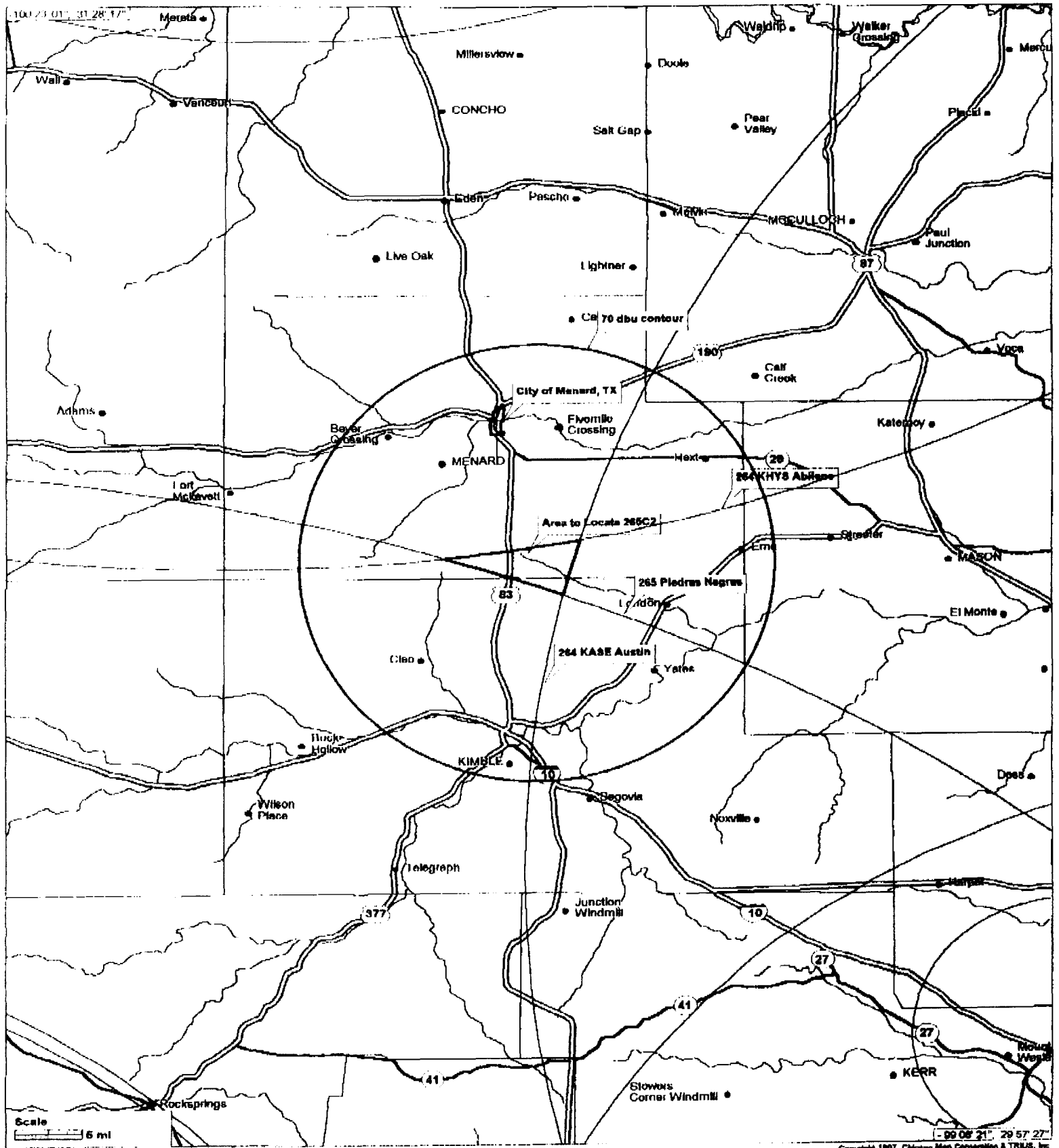
Channel Study of Channel 265C2 Menard, TX Exhibit #2

MAPFM search of channel 265C2 (100.9 MHz), at N. 30 44 0, W. 99 44 0.

Searching Channel 265C2 (100.9 MHz):

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Sonora	TX	211	A	V	89.2	15.0	258.10	74.2
KTXI	Ingram	TX	211	C2	L	94.1	20.0	137.90	74.1
ALC	Junction	TX	212	A	V	27.3	15.0	187.10	12.3
ALC	San Antonio	TX	262	C	U	165.7	105.0	144.00	60.7
KCYV	San Antonio	TX	262	C	L	165.7	105.0	144.00	60.7
ALC	Abilene	TX	263	C	V	183.5	105.0	350.60	78.5
ALC	Austin	TX	264	C	U	191.0	188.0	103.90	3.0
ALC	Abilene	TX	264	C	V	189.6	188.0	349.20	1.6
KASE	Austin	TX	264	C	L	191.0	188.0	103.80	3.0
KASE	Austin	TX	264	C	L	191.0	188.0	103.80	3.0
KHYS	Abilene	TX	264	C	L	189.6	188.0	349.20	1.6
KHYS	Abilene	TX	264	C	A	189.6	188.0	349.20	1.6
ALC	Piedras Negras	CI	265	B		240.3	237.0	201.80	3.3
ALC	Helotes	TX	266	C1	U	132.0	158.0	138.60	-26.0 (Alloc)
ALC	Mertzon	TX	266	A	A	118.7	106.0	299.40	12.7
KONOFM	Helotes	TX	266	C1	L	165.7	158.0	144.00	7.7
ALC	Brownwood	TX	267	C1	U	129.6	79.0	31.60	50.6
KOXE	Brownwood	TX	267	C1	C	129.6	79.0	31.60	50.6
KOXE	Brownwood	TX	268	C1	L	129.6	79.0	31.60	50.6

Exhibit #1 Ch. 265C2 Menard, Texas



Map created using Precision Mapping 3.0

Copyright 1997. Chicago Map Corporation & TRUIS, Inc.


CERTIFICATE OF SERVICE

I, Michael S. Goldstein, secretary at the law firm of Shainis & Peltzman, Chatered, do hereby certify that I sent copies of the foregoing document this 7th day of February, 2000, via first class U.S. mail, postage prepaid, to the following:

John J. McVeigh, Esq.
12101 Blue Paper Trial
Columbia, MD 21044-2787

Vincent J. Curtis, Jr., Esq.
Anne Goodwin Crump, Esq.
Fletcher Heald & Hildreth, P.L.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801

Lawrence N. Cohn, Esq.
Cohn & Marks
1920 N Street, N.W., Suite 300
Washington, DC 20036-1622



Michael S. Goldstein